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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Holiday Inn-Laurel--Entitlement to Costs

**File:** B-265646.4

**Date:** November 20, 1995

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James H. Roberts III, Esq., and Beverly K. Carmichael, Esq., Manatt, Phelps & Phillips, for the protester.

Col. Nicholas P. Reston, and Capt. Philip T. McCaffrey, Department of the Army, for the agency.

Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protester is not entitled to the costs of filing and pursuing its protest when the agency took corrective action after comments were filed where the comments raised new allegations; the corrective action was clearly linked to these new allegations and not to the initial protest allegation, which was not clearly meritorious; and the corrective action was taken 5 working days after the comments were filed.

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## DECISION

Holiday Inn-Laurel requests that we declare it entitled to reimbursement of its costs of filing and pursuing a protest challenging the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DAHC36-95-R-0012, issued by the Department of the Army for the provision of meals, lodging, and transportation to support the Baltimore Military Entrance and Processing Station in Baltimore, Maryland. Holiday Inn contends that the Army unduly delayed taking corrective action in response to its protest.

We deny the request.

The RFP, issued on May 26, 1995, set forth various technical factors and price as evaluation criteria and advised that award would be made to the offeror submitting the lowest-priced, technically acceptable offer. The Army evaluated the offers it received, conducted discussions, reevaluated the offers, and excluded Holiday Inn's proposal from the competitive range as technically unacceptable.

On August 17, Holiday Inn filed a protest with our Office challenging the Army's action and specifically argued that the Army improperly concluded that its proposal did not comply with the RFP's overflow housing requirements.<sup>1</sup> Holiday Inn pointed out that its proposal stated that it would comply with these requirements.

On September 22, the Army submitted its report to our Office in which it asserted that Holiday Inn's "blanket assurances" were not sufficient to show compliance with the RFP's requirements. The agency stated that its actions were proper, and provided evaluation documents to support its position. Three days later, in response to the protester's request for additional documents, the Army provided its competitive range determination. That document listed the point spread demarcating the Army's competitive range, and stated that Holiday Inn's proposal was found technically unacceptable for two previously undisclosed reasons: the firm had very little past experience and had not submitted past performance evaluations, and its training plans for employee orientation and customer service were unacceptable.

On September 29, Holiday Inn filed its comments on the agency report. In addition to addressing the Army's response concerning its overflow housing procedures, Holiday Inn raised several new issues derived from the agency report. Specifically, Holiday Inn argued that the Army improperly failed to consider price in its competitive range determination and used a predetermined cutoff score; improperly failed to reevaluate its proposal under the site visit factor; improperly determined that it, the incumbent contractor, had little past experience; improperly required it to submit past performance evaluations when the Army possessed such evaluations; and improperly evaluated its orientation plan.

On October 3, our Office asked the Army to respond to Holiday Inn's allegations concerning the site visit and past performance evaluations. On October 6, in lieu of filing a response to our request, the Army advised our Office that it was taking corrective action by reopening discussions and including the protester's proposal in the competitive range. In light of the corrective action, we dismissed the protest as academic on October 11. Holiday Inn now requests that we find it entitled to the costs of filing and pursuing its protest.

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<sup>1</sup>We dismissed Holiday Inn's earlier protest of the Army's action because the firm had not yet requested or received a debriefing to learn the Army's reasons for excluding its proposal from the competitive range. During the debriefing, Holiday Inn was told only that its proposal was technically unacceptable because it had not complied with the RFP's overflow housing requirements.

Where an agency takes corrective action prior to our issuing a decision on the merits, we may declare the protester entitled to recover the reasonable costs of filing and pursuing the protest. 4 C.F.R. § 21.6(e) (1995). We will find a protester so entitled, however, only where the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. Oklahoma Indian Corp.--Claim for Costs, 70 Comp. Gen. 558 (1991), 91-1 CPD ¶ 558. A protester is not entitled to costs where, under the facts and circumstances of a given case, the agency has taken reasonably prompt corrective action. Id. In deciding whether an agency's corrective action was so delayed as to warrant the award of costs, the determination of the appropriate date from which the promptness of the corrective action is measured is critical. CSL Birmingham Assocs.; IRS Partners-Birmingham--Entitlement to Costs, B-251931.4; B-251931.5, Aug. 29, 1994, 94-2 CPD ¶ 82.

Holiday Inn argues that the Army had two opportunities to take earlier corrective action--its agency report and its response to the protester's request for additional documents--and that its failure to do so was an undue delay which caused Holiday Inn to expend significant time and resources in filing and pursuing the protest. The protester argues that the reason now given for the Army's having taken corrective action--its allegation that the Army failed to consider price in its competitive range determination--was put before the Army in the August 17 protest, to the extent it raised the basic issue of whether the competitive range was properly formed.

Holiday Inn's August 17 protest was specifically limited to a challenge of the Army's evaluation of its overflow housing procedures. It was not until September 29 that Holiday Inn raised the additional allegations described above. Where a protester raises different protest grounds in multiple submissions to our Office, the filing of the initial protest establishes the appropriate date for determining the promptness of the agency's subsequent corrective action only where there is a nexus between the protest grounds set forth at that time and the corrective action. See GVC Cos.--Entitlement to Costs, B-254670.4, May 3, 1994, 94-1 CPD ¶ 292. Here, the corrective action was not clearly related to the allegation concerning Holiday Inn's overflow procedures; rather, the agency's decision to take corrective action was based on its failure to consider price in the competitive range determination, an issue that was not raised by the protester until its September 29 comments.

Contrary to the protester's view, its initial challenge to the competitive range determination on the basis that its proposal was improperly evaluated under one specific subfactor did not obligate the Army to review its entire competitive range determination in an effort to identify any errors that may have occurred. While an agency should be aware of such errors and take corrective action when necessary, when it is not so aware, the bid protest process is an effective tool for identifying and seeking correction of such errors. The mere existence of an error of which an agency arguably should be aware and take action to correct does not mean that the

agency has unduly delayed by not taking corrective action until after the alleged error is identified in a bid protest. Id.

In our view, there was nothing in Holiday Inn's August 17 protest that would justify using that date to measure whether the Army unduly delayed taking corrective action in the face of a clearly meritorious protest.<sup>2</sup> Instead, the relevant date for measuring the promptness of the Army's response to Holiday Inn's protest is September 29, when that firm's comments raised the specific challenges identified above concerning the evaluation of its offer. Even assuming that those issues were clearly meritorious, the Army's notification of corrective action on October 6, 5 working days after Holiday Inn's comments were filed, did not constitute undue delay. Id.

The request for a declaration of entitlement to costs is denied.

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<sup>2</sup>In addition to lacking a sufficient nexus to the corrective action, the initial allegation as to the agency's evaluation of Holiday Inn's plan for overflow housing is not clearly meritorious, also a prerequisite for determining that the agency unduly delayed taking corrective action. Specifically, the record shows that the agency concluded that Holiday Inn's general responses did not satisfy the RFP's requirement for a plan to deal with overflow needs. While the protester disagrees with the agency's conclusion, we see no basis to conclude that the agency's evaluation was clearly unreasonable in this area.